



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

December 9, 2003

Ms. Lisa D. Patterson  
General Counsel  
State Board for Educator Certification  
4616 West Howard Lane, Suite 120  
Austin, Texas 78728

OR2003-8820

Dear Ms. Patterson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192367.

The State Board of Educator Certification ("SBEC") received a request for "all records and documents in SBEC's possession that relate to [the requestor's client]." Among other arguments, you claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.111 of the Government Code.

Initially, we note that in your request for a decision from this office dated October 2, 2003, you stated that "[o]n September 16, 2003, the requestor mailed his request to one of SBEC's investigators, John Lopez, and not to [SBEC's] public information officer or designee. Board staff forwarded the request to me as a public information designee on or about September 19, 2003." However, in your letter to this office dated October 15, 2003, you state that "[o]n September 16, 2003, the requestor *faxed* his request to one of SBEC's investigators . . . and not to [SBEC's] public information officer or designee," and that on or about September 19, SBEC staff "forwarded the *faxed* request to me as the public information designee identified on SBEC's website and in other published agency information." [Emphasis added]. You then noted that "under section 552.301(c) of the [Public Information] Act [the "Act"], a request made by electronic mail or facsimile transmission must be addressed to the officer for public information or the officer's designee." Because you are relying on section 552.301(c) of the Act, we understand you to represent that the request in this matter was faxed to SBEC and not mailed.

The Act's disclosure requirements are generally triggered by a governmental body's receipt of a written request for information. *See* Gov't Code § 552.301(a). However, in instances where a written request is submitted to a governmental body by facsimile transmission or through e-mail, the Act, as you note, specifically provides that the request be "sent to the officer for public information, or the person designated by that officer[.]" *Id.* § 552.301(c). Thus, for written requests that are submitted to a governmental body via facsimile or e-mail, the Act's disclosure requirements are triggered only if the request is sent to the governmental body's "officer for public information," or by a person designated by that officer to receive such requests.

In this case, you state that the request was faxed to an SBEC employee who is not SBEC's officer for public information. *See* Gov't Code § 552.201 (officer for public information is defined as chief administrative officer of governmental body). You also indicate that the employee is not a person who has been designated by SBEC to receive open records requests. We thus conclude that the faxed request at issue here was not a proper request under the Act, and SBEC need not respond to the request as it fails to comply with the Act. In light of this conclusion, we need not address the asserted exceptions to public disclosure or the issue of whether the requestor has a right of access to the requested information under section 552.023 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839.

The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/jh

Ref: ID# 192367

c: Mr. Donald Lindsey  
9801 Anderson Mill Road  
Suite 230  
Austin, Texas 78750  
(w/o enclosures)